

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FEDERAL DEPOSIT INS. CORP.,

Plaintiff,

vs.

COREY L. JOHNSON, et al.,

Defendants.

Case No. 2:12-cv-00209-KJD-PAL

ORDER

This matter is before the court on Plaintiff FDIC-R's Memorandum of Points and Authorities Regarding Sealed Documents (Dkt. #172) filed March 25, 2014. The court has considered the Memorandum.

On March 13, 2014, the court denied Defendant Corey L. Johnson's Motion for Leave to File Under Seal Defendant Corey Johnson's Motion for Summary Judgment (Dkt. #161) without prejudice. That Motion sought to file certain documents as exhibits to Defendant Johnson's Motion for Summary Judgment (Dkt. #162) under seal. Defendant represented that Plaintiff had deemed those documents confidential pursuant to the Protective Order (Dkt. #62) entered by the court on August 14, 2012. On March 13, 2014, the court entered an Order (Dkt. #168) denying Defendant's Motion for Leave to File Under Seal without prejudice because Defendant had not established compelling reasons for keeping the Motion for Summary Judgment under seal as required by the Ninth Circuit in *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006). The court allowed Plaintiff until March 25, 2014 to file a memorandum of points and authorities along with any supporting declaration to establish compelling reasons for keeping the Motion for Summary Judgment under seal. Plaintiff complied and filed the instant Memorandum.

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1 Plaintiff represents that it only seeks to keep the following exhibits to Defendant's Motion for
 2 Summary Judgment under seal:

- 3 (a) Exhibit 74—Bank Examination Report by Bret Morgan dated May 30, 2006.
- 4 (b) Exhibit 75—Bank Examination Report by Dirk Smith dated May 14, 2007.
- 5 (c) Exhibit 76A—Bank Examination Report by Bret Morgan dated June 9, 2008.
- 6 (d) Exhibit 76B—Bank Examination Report by Bret Morgan dated June 9, 2008.
- 7 (e) Exhibit U—Deposition of Bret Morgan, Vol. 1, pp. 298-317.

8 Plaintiff represents that it is required to maintain documents containing bank regulatory
 9 information and bank information created in the course of its examination and supervision of a bank
 10 confidential. The documents Plaintiff wishes to keep under seal contain sensitive financial information
 11 of Silver State Bank and also reflect the bank examiners' opinions, analyses, deliberations and
 12 conclusions regarding Silver State Bank. In addition, 12 C.F.R. §§ 261.2(c)(1)(I) and 309.5(g)(8) list
 13 examination reports as exempt records, and 12 C.F.R. §§ 309.6(a) and 261.14(a)(8) prohibit disclosure
 14 of exempt records except in certain limited circumstances, none of which do not exist here. Moreover,
 15 courts in other districts have prohibited the disclosure of bank regulatory information and confidential
 16 bank information. Finally, courts have recognized that in order to encourage candor in communications
 17 between banks and their regulators, depositions of bank examiners and bank examination records
 18 should remain confidential.

19 In the Ninth Circuit, it is well-established that the "fruits of pretrial discovery are, in the absence
 20 of a court order to the contrary, presumptively public." *San Jose Mercury News v. United States District*
 21 *Court*, 187 F.3d 1096, 1103 (9th Cir.1999). However, where a party opposing disclosure shows
 22 compelling reasons for limiting access to litigation documents and information produced during
 23 discovery and attached to dispositive motions, the materials may be filed under seal. *See Kamakana v.*
 24 *City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006). The court finds Plaintiff has established
 25 compelling reasons to keep the five exhibits listed, which are attached to Defendant's Motion for
 26 Summary Judgment, under seal.

27 Accordingly,

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- Dated this 8th day of April, 2014.

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